

No. 76-1361

Supreme Court, U. S.

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MAY 17 1977

In the Supreme Court of the United States

OCTOBER TERM, 1976

J. A. McCARTHY, INC., PETITIONER

v.

**EDWARD BRADSHAW AND DIRECTOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS, UNITED STATES
DEPARTMENT OF LABOR***

**ON PETITION FOR WRITS OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

MEMORANDUM FOR THE FEDERAL RESPONDENT

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*Additional captions on inside cover.

INDEPENDENT PIER COMPANY, PETITIONER

v.

JOHN LIND AND DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT
OF LABOR

LAVINO SHIPPING COMPANY, PETITIONER

v.

JAMES W. PARKS AND DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT
OF LABOR

J. A. MCCARTHY, INC., PETITIONER

v.

WILLIAM FAIRMAN AND DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT
OF LABOR

LAVINO SHIPPING COMPANY, PETITIONER

v.

ROBERT MULDOWNEY AND DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT
OF LABOR

MAHER TERMINALS, INC. AND AMERICAN MUTUAL
LIABILITY INSURANCE CO., PETITIONERS

v.

AUGUSTIN CABRERA AND DIRECTOR, OFFICE OF WORKERS'
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MEMORANDUM FOR THE FEDERAL RESPONDENT

These cases present the question whether waterfront workers engaged in the movement of cargo between ocean going vessels and land transportation, and the repair of equipment necessary for such movement, are covered by the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, 86 Stat. 1251, 33 U.S.C. (Supp. V) 902(3) and 903(a).

Edward Bradshaw was injured on the pier while repairing a fork lift customarily used to move cargo aboard vessels and on the pier (Pet. App. A17-A18). John Lind was a checker, injured while tallying bundles of pipe that had been delivered to the pier for export but, having missed their intended vessel, were being prepared for transfer to another pier (*id.* at A30-A31). James W. Parks, a cargo checker, was injured while checking bales of nylon fiber that had been stored on the pier after discharge from a vessel and were being prepared for delivery to the consignee (*id.* at A44-A45). William Fairman worked on the pier as a cooper and was injured while stitching damaged bags of cocoa beans following their discharge from a vessel (*id.* at A57). Robert Muldowney, another checker, was injured while driving

through the terminal storage area to find cargo containers that were to be loaded aboard ship the next day (*id.* at A68). Augustin Cabrera was employed as a terminal laborer and sustained an injury while loading cargo, previously discharged from a vessel, into a consignee's truck (*id.* at A79).

The court of appeals summarily affirmed the decisions of the Benefits Review Board that these workers were covered by the amended Act (Pet. App. A83).

These cases should be controlled by *Northeast Marine Terminal Co. v. Caputo*, No. 76-444, and *International Terminal Operating Co. v. Blundo*, No. 76-454, both argued April 18, 1977.¹ In *Blundo* the claimant was a checker injured while stripping a cargo container that had been removed from a vessel sometime before at another pier; in *Caputo* the worker was injured while loading cargo into a consignee's truck on the pier.

Respondent Cabrera was injured while situated similarly to Caputo; respondents Lind, Parks and Muldowney were, like Blundo, performing the ordinary work of checkers when injured. Although respondents Bradshaw and Fairman were injured while performing varieties of tasks not involved in *Blundo* and *Caputo*, we have argued that the amended statute covers all persons whose employment on the waterfront facilitates the transfer of cargo between land and water transportation. The Court's rationale in *Blundo* and *Caputo* therefore

¹We have furnished to counsel for petitioners a copy of our brief in these cases.

may establish the proper resolution of these cases even if its holdings do not, and we respectfully submit that the Court should defer consideration of the present petition pending its disposition of *Blundo* and *Caputo*.

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